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EXAMINER

BENGZON, GREG C

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID C. LODA

Appeal 2007-3002
Application 10/082,958
Technology Center 2100

Decided: January 3, 2008

Before HOWARD B. BLANKENSHIP, ST. JOHN COURTENAY III, and
STEPHEN C. SIU, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's
Final Rejection of claims 1-19. We have jurisdiction under 35 U.S.C.
§ 6(b). We affirm.

A. INVENTION

1The invention at issue involves monitoring a product and providing data about the product to a user (Spec. 1). In particular, a system gathers visual information of a product and disseminates the data to interested parties (*id.* 3). The information may be transmitted via a server in a wireless LAN (*id.* 4, Fig. 1).

B. ILLUSTRATIVE CLAIMS

Claim 1, which further illustrates the invention, follows:

1. An integrated system comprising:
 - a portal;
 - a server communicating with said portal;
 - at least one wireless local area network in communication with said server;
 - at least one mobile device in wireless communication with said at least one wireless local area network; and
 - a means for enabling two-way communications between said portal and said server.

C. REJECTION

Claim 13 stands rejected under 35 U.S.C. § 112, 2d paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellant regards as the invention. Claims 1-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,449,103 (“Charles”), in view of U.S. Publication No. 2001/0044751 (“Pugliese”).

II. CLAIM GROUPING

1 “When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.

37 C.F.R. § 41.37(c)(1)(vii) (2005).¹

Appellant argues claims 1-19 as a group (App Br. 7-10). We select claim 1 as the sole claim on which to decide the appeal of the group. Appellant argues indefiniteness of claim 13 separately.

III. ISSUES

A1. INDEFINITENESS

Appellant disputes the Examiner’s rejection of claim 13 and asserts that claim 13 “reasonably apprises one of ordinary skill in the art both the utilization and scope of the invention as precisely as the subject matter permits.” (App. Br. 6).

We affirm the Examiner’s rejection of claim 13 under 35 U.S.C. § 112, 2d paragraph. “A claim is indefinite when it contains words or phrases whose meaning is unclear.” (MPEP § 2173.05(e)). Claim 13 recites “said at least one movable platform.” However, the claim contains no earlier recitation or limitation of the movable platform. “[W]here the claim

¹ We cite to the version of the Code of Federal Regulations in effect at the time of the Appeal Brief. The current version includes the same rules.

contains no earlier recitation or limitation of a [recited claim element] and where it would be unclear as to what element the limitation was making reference,” a lack of clarity of the claim arises. (*Id.*) In this case, we find that although claim 13 recites “said . . . movable platform,” the lack of an earlier recitation of the movable platform renders the claim indefinite because it is unclear to what element “said . . . movable platform” refers.

We affirm the rejection of claim 13 under 35 U.S.C. § 112, 2d paragraph because Appellant has failed to demonstrate the Examiner erred in rejecting claim 13.

B1. OBVIOUSNESS

As set forth above, we select claim 1 as the sole claim on which to decide the appeal of claims 1-19. Appellant disputes the Examiner’s conclusion of obviousness of claim 1 and argues that Pugliese fails to disclose “at least one mobile device” (App. Br. 8). The Examiner finds that “Charles fully disclosed ‘*at least one mobile device*’ (Charles – Figure 178, Figure 179, Items 179t, 179r, Column 59 Lines 5-25, Column 60 Lines 1-15) . . . (Charles – Figure 64, Figure 180, Column 45 Lines 55-60, Column 46 Lines 35-50, Column 47 Lines 20-30).” (Ans. 13).

We agree with the Examiner that Charles discloses a mobile device. The Specification, while disclosing an example of a mobile device such as a wireless PC tablet (Spec. 4), fails to provide an express definition of the claim term “mobile device.” “[T]he PTO gives claims their ‘broadest reasonable interpretation.’” *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). We apply a standard definition of “mobile device” to encompass any device that

is movable. We find that devices in the Charles reference cited by the Examiner include devices that are movable. For example, Charles discloses “any size camera, laparoscopic surgical or observation instrument, endoscope, sigmoidoscope, bore scope, projector, . . .” (col. 59, ll. 10-12). We find that a mobile or movable device encompasses any of these devices and that the movable devices disclosed by Charles constitute “mobile devices.”

In addition, Pugliese discloses “one or more hinged video cameras and associated motors . . . movable to view items within a 360-degree arc and hinged to move vertically.” (Para. [0384]). We find that the video camera of Pugliese is movable and therefore constitutes a “mobile device.”

Appellant further argues that “the Examiner’s motivation to combine Charles in view of Pugliese is erroneous as Charles and Pugliese are not analogous art” (App. Br. 8). The Examiner finds that Charles discloses “distribution and display of video data” and that Pugliese discloses remote viewing of subject matter via the Internet (Ans. 15). The Examiner further states that “Charles would have been motivated to implement the teachings of Pugliese in order to facilitate viewing and observing subject matter via the Internet.” (*Id.*)

“In order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.” *In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992). *See also In re Deminski*, 796 F.2d 436 (Fed. Cir. 1986); *In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992) (“A reference is reasonably pertinent if, even though it may be in a different field from that

of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem.”); *Wang Laboratories Inc. v. Toshiba Corp.*, 993 F.2d 858 (Fed. Cir. 1993); and *State Contracting & Eng'g Corp. v. Condotte America, Inc.*, 346 F.3d 1057, 1069 (Fed. Cir. 2003) (where the general scope of a reference is outside the pertinent field of endeavor, the reference may be considered analogous art if subject matter disclosed therein is relevant to the particular problem with which the inventor is involved).

We find based on the record before us that the field of Appellant's endeavor includes gathering of visual data and transmitting the visual data over a network. Charles discloses systems and methods for gathering visual data and providing the data to a user. Charles is in the field of Appellant's endeavor because Charles discloses gathering visual data, as does Appellant's invention. The Examiner finds that Pugliese discloses providing visual data of subject matter over the Internet. (Ans. 15). Pugliese is also in the field of Appellant's endeavor because Pugliese also discloses providing visual data to a user. In addition, the Examiner finds that Charles and Pugliese are both relevant to the problem of “viewing and observing subject matter via the Internet.” (Ans. 15). We agree with the Examiner that both Charles and Pugliese are “analogous prior art” for the purpose of analyzing the obviousness of the subject matter at issue because both are relevant to Appellant's field of endeavor (gathering visual data and providing the data to a user over a network).

Appellant further argues that “Charles does not teach anything truly meaningful with which to provide the requisite motivation to effectively combine with Pugliese . . .” (App. Br. 9) and that “Pugliese does not teach,

suggest or motivate one of ordinary skill in the art to seek out the optical system taught by Charles.” (Id. 10). The Examiner states that one of ordinary skill in the art, given the Charles reference, would have looked “for other disclosures regarding remote viewing and observing of subject matter (Charles – Column 7 Lines 15-20, Lines 33-36) via Internet, such as Pugliese.” (Ans. 16).

As set forth above, Charles discloses optical systems for obtaining images (col. 6, ll. 53-63) using movable imaging devices (col. 59, ll. 10-12). Pugliese discloses obtaining video images through a movable camera (para. [0384]) and sharing the images over a network to “a group of viewers.” (Para. [0166]). One of ordinary skill in the art, given the method of obtaining images of Charles and a market need to provide images over a network would have a finite number of predictable solutions. In one predictable solution as disclosed by Pugliese, the images obtained by movable imaging devices of Charles are shared over a network to a group of viewers. “When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742 (2007). In the present case, the combination of Charles and Pugliese would have resulted in a predictable solution that would have been within the technical grasp of one of ordinary skill in the art.

Hence, we agree with the Examiner that the combination of Charles and Pugliese would have been obvious to one of ordinary skill in the art.

Because Appellant has failed to demonstrate that the Examiner erred in rejecting claim 1, we affirm the rejection of claim 1 as being unpatentable over Charles in view of Pugliese, and of claims 2-19, which fall therewith.

IV. ORDER

In summary, the rejection of claim 13 under § 112, second paragraph and the rejection of claims 1-19 under § 103(a) are affirmed.

AFFIRMED

clj

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